



"Brooks, Patrick J."
<PBrooks@ssd.com>
06/07/2006 04:58 PM

To: Alan.Tenenbaum@usdoj.gov, vpowers@szd.com,
ssamuels@szd.com, LPutman@milbank.com
cc: Elise.Feldman@usdoj.gov, cgibbons@szd.com, "Lerner,
Stephen D." <SLerner@ssd.com>, wvawest@ameritech.net,
TKreller@milbank.com, "Winters, Karen"
bcc:

Subject: RE: CTA

Alan

EPA Region 5 Records Ctr.



367012

See attached. I'll review your comments now.

From: Alan.Tenenbaum@usdoj.gov [mailto:Alan.Tenenbaum@usdoj.gov]
Sent: Wed 6/7/2006 5:45 PM
To: vpowers@szd.com; ssamuels@szd.com; LPutman@milbank.com; Brooks, Patrick J.
Cc: Elise.Feldman@usdoj.gov; cgibbons@szd.com; Lerner, Stephen D.; wvawest@ameritech.net;
TKreller@milbank.com; Winters, Karen; garypie.catherine@epa.gov
Subject: RE: CTA

Down to just a handful of comments, we're almost there:

1. Section 2.1c. The except for clause is not quite right. Instead, please use "The Custodial Trustee shall also set aside in a separate segregated account the cash provided for the Administration Custodial Trust Account, which shall not own any Property."
2. Section 2.6. Waiting for Debtors' language.
2. Section 2.7, second sentence, I think termination is an important enough event that there should be notice separate from 3.2. I think the Trustee was agreeable to this. Please add in second sentence after "shall", "notify the Parties and".
3. Section 5.2. This says that anything that relates in any way to a Property gets paid for by the account for that Property. Since property taxes and some other administrative costs are being paid for by Administration Custodial Trust Account this is not exactly right. We need to add some reference to that account but without making that account liable for things that it is not liable for.

-----Original Message-----

From: PErooks@ssd.com [mailto:PBrooks@ssd.com]
Sent: Wednesday, June 07, 2006 3:11 PM
To: Tenenbaum, Alan (ENRD); vpowers@szd.com; ssamuels@szd.com; LPutman@milbank.com
Cc: Feldman, Elise (ENRD); cgibbons@szd.com; SLerner@ssd.com; wvawest@ameritech.net;
TKreller@milbank.com; KWinters@ssd.com; garypie.catherine@epa.gov

Subject: RE: CTA

Attached is a track changes version of the document that reflects SZD's comments and certain of the comments below. See my comments below.

From: Alan.Tenenbaum@usdoj.gov [<mailto:Alan.Tenenbaum@usdoj.gov>]

Sent: Wed 6/7/2006 1:30 PM

To: vpowers@szd.com; ssamuels@szd.com; LPutman@milbank.com; Brooks, Patrick J.

Cc: cgibbons@szd.com; Lerner, Stephen D.; wvawest@ameritech.net; TKreller@milbank.com; Winters, Karen; garypie.catherine@epa.gov; Elise.Feldman@usdoj.gov

Subject: RE: CTA

Here are our comments, mostly cleanup:

1. Page 3. Hopefully, we will be able to reach agreement on Ohio after the Court rules; However, if there is any need for us to appeal, we will need to note the appeal and preserve all parties' rights relating to any appeal (given that we are a party to this document).

I DON'T THINK THIS IS THE APPROPRIATE DOCUMENT IN WHICH TO PRESERVE APPEAL RIGHTS. IT IS A BASELINE DOCUMENT THAT HAS NOTHING TO DO WITH THE ISSUES DISPUTED RELATIVE TO OHIO. WE WOULD TAKE THIS AS BAD FAITH NEGOTIATION IF YOU WERE TO TAKE THE POSITION THAT THE OHIO FUNDING DISPUTE HAS ANYTHING TO DO WITH THIS DOCUMENT AND YOUR WILLINGNESS TO SIGN IT.

2. Page 6. It looks like the Distribution Notice and Disposition Notice Parties are the same. If so, can we combine into one term?

IF IT IS, IT IS NON-MATERIAL.

3. Page 9, Section 2.1(c). It looks like the Administrative account is only mentioned in the definitions and in passing in Section 2.2c. It looks like we should include it in Section 2.1(c), which talks about the setting up the accounts. Something like The Custodial Trustee shall also set aside in a separate segregated account the cash provided for the Administration Custodial Trust Account.

SEE MARK-UP.

4. Page 10, Section 2.1(d). Add "and shall allocate the expenses of administration to the Administration Custodial Trust Account."

THIS IS ALREADY COVERED IN DOCUMENT

5. Page 17, Section 2.4(e). We continue to favor "may be insufficient to satisfy" instead of "are more than likely to satisfy". I think we should trust the Trustee to use his discretion appropriately on this. Also, we are waiting for you to send us the historical information so that we can determine if 15% is sufficient. However, if you would prefer to short-circuit this and just increase the percentage to up to 50%, we will forego reviewing the historical information. This may be the prudent thing to do for everyone's benefit since no one is going to do well if the Trustee runs out of administrative funding and has to resign.

SEE MARK UP. THERE HAS TO BE SOME LEVEL OF JUDGMENT EXERCISED BY THE TRUSTEE.

6. Page 18, Section 2.4(g). I'm not sure why this sentence was deleted. Maybe because you also made a new definition. However, we need to rely on this sentence, not the definition. The definition was only for convenience of the reader.

SEE MARK-UP.

7. Page 19, Section 2.6(a) and 2.6(b). We still need your new proposed language here. This language would not prevent the buyer from arguing that it somehow did not have to implement the cleanup or from stopping the cleanup mid-stream.

IN OUR CALL YOU WERE TALKING ABOUT PROSPECTIVE PURCHASER ASSERTING IT IS IMMUNE. DO YOU HAVE SPECIFIC SUGGESTIONS?

8. Page 20, Section 2.7, add provision for notice to the Parties.

3.2, REFERENCED IN 2.7, INCLUDES NOTICE PROVISION.

9. Page 26, Section 4.5(d), I thought we were going to add "consistent with this Agreement" after "Proceeds" here.

SEE MARK-UP.

10. Page 34, add addresses for notices to Agency Beneficiaries.

SEE MARK-UP.

Thanks. Alan.

-----Original Message-----

From: PBrooks@ssd.com [mailto:PBrooks@ssd.com]

Sent: Tuesday, June 06, 2006 10:41 PM

To: Tenenbaum, Alan (ENRD); vpowers@szd.com; ssamuels@szd.com; LPutman@milbank.com

Cc: cgibbons@szd.com; SLerner@ssd.com; wvawest@ameritech.net; TKreller@milbank.com; KWinters@ssd.com

Subject: CTA

<<Custodial Trust Agreement.DOC>> At <<Redline.doc>> tached is a clean and redline of the CTA reflecting our discussions today and the language provided by SZD. Please let me know by email if you have any additional comments, or if this is acceptable.

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